

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

27631

FILE: B-213308

DATE: March 7, 1984

MATTER OF: J. T. Systems, Inc.

DIGEST:

1. Bid which offered to furnish aluminum instead of steel exhaust fan propellers took exception to a material requirement of the IFB and therefore was properly rejected as nonresponsive.
2. A nonresponsive bid may not be corrected after bid opening, since permitting a bidder to do so would be tantamount to allowing the submission of a new bid.
3. Protest alleging improprieties in an IFB apparent prior to bid opening must be filed before bid opening in order to be considered.

J. T. Systems, Inc. protests the award of a contract for 20 exhaust fans to Hartzell Fan, Inc. under invitation for bids (IFB) No. DAAG48-83-B-0021 issued by the Corpus Christi Army Depot, Department of the Army. J. T. Systems complains that the Army improperly rejected its low bid as nonresponsive. The firm further alleges that Hartzell's bid was in fact nonresponsive, and that the IFB's specifications were made unduly restrictive in that they merely reflected the specifications for the Hartzell product. We deny the protest in part and dismiss it in part.

The IFB's specifications required that the propellers for the exhaust fans be constructed of "6 die-formed, single thickness airfoil blades of no less than 20 gauge steel welded to the hub." J. T. Systems' low bid offered to furnish aluminum propellers.

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After bids had been opened, the contracting officer contacted J. T. Systems to inquire, among other concerns, why the firm had offered aluminum, when the IFB had specified steel, propellers. The firm's president replied that he felt that aluminum propellers were lighter, quieter and more efficient. However, he also offered to furnish steel propellers at the same price. The contracting officer responded that the firm's bid would be considered as originally submitted. The Army then rejected J. T. Systems' as nonresponsive for taking exception to the IFB's specification requiring steel propellers, and, accordingly, made award to Hartzell as the low responsive bidder.

J. T. Systems complains that the Army rejected its bid as nonresponsive even though the firm offered to substitute steel for the aluminum propellers originally offered in its bid. There is no legal merit to this complaint.

A responsive bid is one that on its face is an offer to perform, without exception, the exact thing called for in the invitation. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20. A bid which does not contain an unequivocal offer to provide the requested items in total conformance with the material terms of the solicitation is nonresponsive and must be rejected. A material deviation is one that affects the price, quality, quantity or delivery of the goods or services offered. Fluke Trendar Corporation, B-196071, March 13, 1980, 80-1 CPD 196.

We have no reason to view the specification for steel propellers, which is one of seven design mandates listed in the invitation, as other than a material requirement. Consequently, J. T. Systems' offer to furnish aluminum propellers clearly required rejection of its bid as nonresponsive. Further, although the contracting officer's post-bid opening inquiries may have led J. T. Systems to believe that it could change the bid to steel propellers, subsequently the contracting officer correctly informed the firm that no change could be allowed and that the bid would be considered as originally submitted. A nonresponsive bid may not be corrected after bid opening in order to make it responsive, since permitting a bidder to do so would be tantamount to allowing the submission of a new bid. Brod-Dugan Company, B-212731, November 28, 1983, 83-2 CPD 619. Thus, the Army could not accept J. T. Systems' offer, made after bids were opened, to substitute steel propellers at the same bid price.

J. T. Systems alleges that Hartzell's bid also was nonresponsive. However, the Army's report on the protest, and our examination of Hartzell's bid, show that the bid stated no exceptions to the IFB's specifications. In fact, the bid was accompanied by a cover letter describing Hartzell's product, which indicated that the fans actually exceeded a number of the mandatory specifications. J. T. Systems has furnished this Office with no evidence to support its position, and a protester's unsupported allegation does not meet the firm's burden to prove its case. See Gas Turbine Corporation, B-210411, May 25, 1983, 83-1 CPD 566.

Finally, J. T. Systems alleges that the IFB's specifications were unduly restrictive because they basically reflected the specifications for the Hartzell product. The Army responds that although the procuring activity developed its specifications from the Hartzell product literature, the specifications themselves were largely functional in nature and were designed to maximize competition.

We dismiss this issue of protest. Under our Bid Protest Protest Procedures, a protest based upon alleged improprieties in an invitation which are apparent prior to bid opening must be filed before that time. 4 C.F.R. § 21.2(b)(1) (1983). J. T. Systems never objected to the IFB's specifications prior to the September 12, 1983 bid opening, and only raised the issue for the first time in its October 6 protest to this Office. The matter is therefore untimely and will not be considered. Brod-Dugan Company, supra.

The protest is denied in part and dismissed in part.

for Milton J. Fowler
Comptroller General
of the United States